United States Department of Labor Employees' Compensation Appeals Board

T.M., Appellant))	
and)	Docket No. 12-1307 Issued: December 12, 2012
DEPARTMENT OF THE NAVY, MARINE CORPS LOGISTICS BASE, Albany, GA, Employer))) _)	issucu. Detember 12, 2012
Appearances: Appellant, pro se Office of Solicitor, for the Director		Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge COLLEEN DUFFY KIKO, Judge PATRICIA HOWARD FITZGERALD, Judge

On May 30, 2012 appellant filed a timely appeal from a March 30, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration as untimely and insufficient to establish clear evidence of error and a May 14, 2012 nonmerit decision denying his request for a hearing as it was made after he requested reconsideration. The Board docketed the appeal as No. 12-1307.

The Board has duly considered this matter and finds that the case is not in posture for decision. This case has previously been before the Board. By decision dated December 9, 2009, the Board affirmed a May 1, 2009 decision finding that appellant did not establish a recurrence of a medical condition on July 24, 2004 causally related to his April 18, 2002 employment injury. The Board also affirmed another May 1, 2009 decision denying his request for a

¹ Docket No. 09-1413 (issued December 9, 2009). OWCP accepted that on April 18, 2002 appellant sustained a temporary aggravation of preexisting lumbar degenerative disc disease at L4-5 and L5-S1 and lumbago due to an April 18, 2002 work injury. It found that the conditions had resolved on May 6, 2002, the date his physician released him to resume employment. On February 1, 2009 he filed a notice of recurrence of disability on July 20, 2004 due to his April 18, 2002 work injury.

schedule award after finding that he had not submitted medical evidence showing that he sustained a permanent impairment of the lower extremities.

On March 11, 2012 appellant requested reconsideration of the May 1, 2009 decision. He contended that his condition had materially worsened. Appellant related that he had submitted new medical evidence under file number xxxxxx248 relevant to lumbar strain but that the case was closed. He referred to accompanying new medical evidence showing L4-5 spondylolithesis under file number xxxxxx248. In support of his request for reconsideration, appellant submitted a December 20, 2011 impairment evaluation from a physical therapist and numerous medical reports originally provided under other file numbers.

On March 18, 2012 appellant argued that all his claims regarding his back and right leg should be combined. He asserted that he was requesting reconsideration of the May 1, 2009 decision based on newly submitted medical evidence. Appellant referenced medical evidence submitted in connection with another file number.

By decision dated March 30, 2012, OWCP denied appellant's request for reconsideration as untimely filed and insufficient to establish clear evidence of error. It stated:

"Your March 18, 2012 request for reconsideration cites new evidence and medical records. Since your request is untimely, we are not obligated to review new evidence. You did not explain in your reconsideration request how the prior decision or decisions were in error. Therefore, there is no basis for a review."

This is not, however, the proper standard. In order to determine whether appellant has established clear evidence of error, OWCP will review the evidence submitted and arguments raised in support of the request and determine whether such evidence or argument is sufficient to show error in its prior decision.² It shall then issue a decision containing findings of fact and conclusions of law.³ OWCP did not discuss any evidence or argument submitted in support of the reconsideration request. Its failure to provide factual findings and explain the basis for its conclusion that appellant did not demonstrate clear evidence of error precludes the Board's review of the decision. The case, therefore, is remanded to OWCP for an appropriate decision containing a detailed explanation of its determination regarding its denial of his reconsideration request.⁴

² See George C. Vernon, 54 ECAB 313 (2003).

³ 20 C.F.R. § 10.126.

⁴ In view of the Board's finding regarding the denial of his request for reconsideration, the issue of whether OWCP properly denied appellant's request for a hearing as it was made after he requested reconsideration is moot.

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 14 and March 30, 2012 are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: December 12, 2012

Washington, DC

Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge Employees' Compensation Appeals Board